

COMMONWEALTH OF VIRGINIA
BOARD OF HEALTH
AUTHORIZED ONSITE SOIL EVALUATOR REGULATIONS

12 VAC 5-615



OFFICE OF ENVIRONMENTAL HEALTH SERVICES
DIVISION OF ONSITE SEWAGE AND WATER SERVICES
VIRGINIA DEPARTMENT OF HEALTH
RICHMOND, VIRGINIA

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Events of Adoption
Authorized Onsite Soil Evaluator Regulations
12 VAC 5-615

These regulations were promulgated by the Board of Health pursuant to §§ 32.1-163.5 and 32.1-164 of the *Code of Virginia* (1950) as amended and in conformity with the Administrative Process Act (*Code of Virginia*, Title 2.2, Chapter 40).

These are new regulations that replace the *Emergency Authorized Onsite Soil Evaluator Regulations* (12 VAC 5-615) promulgated by the Board on January 3, 2000, pursuant to the 1999 Acts of Assembly, Chapter 871. The *Emergency Authorized Onsite Soil Evaluator Regulations* expired January 2, 2001.

July 31, 2000	Notice of Intended Regulatory Action published in the <i>Virginia Register of Regulations</i> .
August 3, 2001	Board of Health approved proposed <i>Authorized Onsite Soil Evaluator Regulations</i> .
October 8, 2001	Proposed <i>Authorized Onsite Soil Evaluator Regulations</i> published in the <i>Virginia Register of Regulations</i> for public comment.
October 25, 2001	Public Hearing, Middletown.
November 7, 2001	Public Hearing, Roanoke County.
November 29, 2001	Public Hearing, Henrico County.
April 26, 2002	Board of Health adopted final <i>Authorized Onsite Soil Evaluator Regulations</i> .
May 20, 2002	Final <i>Authorized Onsite Soil Evaluator Regulations</i> published in the <i>Virginia Register of Regulations</i> .
July 1, 2002	Effective date.

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PART I.
GENERAL PROVISIONS.

12 VAC 5-615-10. Authority for regulations.

Section 32.1-164 of the Code of Virginia provides that the State Board of Health has the duty to qualify individuals as authorized onsite soil evaluators (AOSEs) and establish procedures for utilizing the work of AOSEs and professional engineers (PEs) in consultation with AOSEs when issuing construction permits, certification letters, and subdivision approvals. Section 32.1-163.4 of the Code of Virginia provides that the department shall contract with an AOSE for the field evaluation of backlogged application sites and that the department shall only accept private evaluations from AOSEs. Section 32.1-163.5 of the Code of Virginia provides that the department shall accept private evaluations and designs for residential development from an AOSE or a PE in consultation with an AOSE and that the department is not required to perform a field check of such evaluations and designs prior to issuing an approval; the department may, although it is not required to, accept evaluations and designs from an AOSE or a PE in consultation with an AOSE for a proprietary, pre-engineered system that has been deemed by the department to comply with the board's regulations.

12 VAC 5-615-20. Purpose of regulations.

These regulations have been promulgated to:

1. Guide the state health commissioner in determining who should be listed as an authorized onsite soil evaluator.
2. Guide certified professional soil scientists and others in the procedures necessary to become and maintain the status of authorized onsite soil evaluator.
3. Guide authorized onsite soil evaluators and professional engineers in the processes and site documentation procedures necessary to secure timely responses to applications submitted to the department.
4. Establish standards of practice and conduct for AOSEs.

12 VAC 5-615-30. Relationship to the Sewage Handling and Disposal Regulations.

This chapter is supplemental to the current Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.) adopted by the State Board of Health pursuant to Title 32.1 of the Code of Virginia. This chapter addresses the department's program for qualifying authorized onsite soil evaluators, processing applications with AOSE/PE supporting documentation, quality control procedures, and enforcement.

12 VAC 5-615-40. Administration of regulations.

This chapter is administered by the following:

1. The State Board of Health, hereinafter referred to as the board, has the responsibility to promulgate, amend, and repeal regulations necessary to recognize and use the work of AOSE/PEs to site and design onsite wastewater systems in a manner that protects public health and the environment.
2. The State Health Commissioner, hereinafter referred to as the commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session. The commissioner may delegate authority under this chapter with the exception of the authority to issue orders under § 32.1-26 of the Code of Virginia.
3. The State Department of Health, hereinafter referred to as the department, is designated as the primary agent of the commissioner for the purpose of administering this chapter.
4. The district or local health departments are responsible for implementing and enforcing the operational activities required by this chapter.
5. The Sewage Handling and Disposal Appeal Review Board may hear the appeal of an aggrieved named party in any case where the department has revoked a sewage disposal system permit, certification letter, or subdivision approval when that approval was issued in reliance upon the certified evaluation and design of an AOSE/PE.

12 VAC 5-615-50. Authorized Onsite Soil Evaluator Advisory Committee.

The commissioner shall appoint an Authorized Onsite Soil Evaluator Advisory Committee consisting of up to 15 appointed members and one ex officio member. The commissioner shall appoint members to the Authorized Onsite Soil Evaluator Advisory Committee as follows: four AOSEs from four different regions of the Commonwealth, one or more of whom must be a member of the Virginia Association of Professional Soil Scientists; four individuals currently employed by the department as Environmental Health Specialist Senior (these may or may not also be AOSEs); two persons actively engaged in the installation of onsite sewage systems; one professional engineer; one person who is a realtor licensed in Virginia; and three discretionary voting positions intended to provide substantive expertise, when needed, from the following categories (but not limited to these categories): Homebuilder/Developer, Well Driller, Local Government, Lending Institution, Surveyor. Each member of the advisory committee may be appointed to serve a term of two years; however, the commissioner, when making initial appointments, shall designate seven of the members to serve terms of three years. The appointment, renewal and removal of each advisory committee member lies in the sole discretion of the commissioner. The commissioner should seek to ensure that one or more members of the

advisory committee is a homeowner with experience with onsite sewage systems so that homeowner's interests may be represented on the committee. The director of the division, or a designee, shall serve as an ex officio member of the advisory committee. The commissioner shall designate the chairman of the committee and members shall serve at the discretion of the commissioner. The committee shall make recommendations to the commissioner regarding AOSE/PE policies, procedures, and programs. The committee shall meet at least annually. The committee shall establish its rules of order.

12 VAC 5-615-60. Scope of regulations.

- A. This chapter describes the content and form of site and soil evaluation reports submitted to the department by an AOSE/PE pursuant to an application filed for an approval under the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.). The department will accept applications from owners (or their agents) without any site evaluation work (bare applications), with complete supporting documentation from an AOSE/PE, and until December 31, 2005, with complete supporting documentation from non-AOSE/PE consultants. After December 31, 2005, the department will continue to accept bare applications from owners (or their agents) and will only accept site evaluation reports and designs from AOSE/PEs.
- B. The provisions of local ordinances regarding onsite wastewater systems that are more restrictive than, and not inconsistent with, the Sewage Handling and Disposal Regulations are not affected by this regulation unless a locality indicates in writing to the commissioner that it wants the department to apply its more restrictive ordinances in concert with the provisions of this chapter. When such a request is made, the department will require all AOSE/PE reports submitted in the locality to be certified as complying with both the Sewage Handling and Disposal Regulations and the more restrictive local requirements and implement the provisions of the more restrictive ordinances pursuant to this chapter. In those localities with more restrictive ordinances where the local government has not indicated to the commissioner in writing that it desires that the provisions of this chapter be applied to the more restrictive ordinances, the department will review all applications for compliance with state law and regulations only. Such applicants then must obtain a certification of compliance with local ordinances from a local official. The department shall maintain a list of all localities that have notified the commissioner in writing pursuant to this section.
- C. The department may accept evaluations and designs from AOSE/PEs in accordance with this chapter that include a certification as to the suitability of sites for the construction of private wells in accordance with the Private Well Regulations (12 VAC 5-630).

12 VAC 5-615-70. Roles and responsibilities.

- A. An AOSE/PE must certify that a site meets or does not meet the requirements of either the Sewage Handling and Disposal Regulations (12 VAC 5-610), the Private Well Regulations (12 VAC 5-630), or both, and may design certain traditional systems in accordance with the same regulations. Responsibility for assuring that site evaluations and designs comply with

the Sewage Handling and Disposal Regulations or the Private Well Regulations rests with the AOSE/PE submitting the work.

B. The Department of Health shall have the following responsibilities:

1. The department's role in evaluating an AOSE/PE submission will be to review the materials submitted with an application as it deems necessary to assure compliance with this chapter, the Sewage Handling and Disposal Regulations, the Private Well Regulations and the department's policies prior to approval or disapproval of an application.
2. The department is not required to conduct a field check of any evaluation and/or design submitted pursuant to this chapter prior to issuing the appropriate approval; however, it will conduct such field reviews as it deems necessary to protect public health and the environment and to assess the performance of AOSE/PEs.
3. When requested by an AOSE/PE prior to the filing of an application for a construction permit or certification letter, the department may provide a site-specific field review consultation. Such requests shall not be included in any calculation of backlogs nor shall they be subject to the time limits contained in 12 VAC 5-615-80 or to deemed approval. The department may limit the number of such professional courtesy reviews provided to any individual AOSE/PE as it deems reasonable and as its resources allow. The professional courtesy review shall not be considered to be a case decision.
4. The department may provide professional courtesy reviews as it deems reasonable and as its resources allow when requested by an AOSE/PE in conjunction with a proposed subdivision, provided such field reviews are general in nature (not site-specific) and provided the developer or owner has generated a base map or preliminary plat of the proposed subdivision and provided that the request for review is made prior to any submission of a subdivision package to the local government for consideration under local subdivision ordinances. Such professional courtesy reviews shall be voluntary and within the sole discretion of the department and shall not be subject to any time limits. Professional courtesy reviews shall not be considered to be case decisions.
5. Whenever the department has approved a permit, certification letter, or subdivision approval in reliance upon an AOSE/PE certification and later has reason to believe that the site or sites or system design submitted by the AOSE/PE does not substantially comply with the minimum requirements of the Sewage Handling and Disposal Regulations, the department may initiate proceedings, in accordance with the Sewage Handling and Disposal Regulations, to revoke or modify its approval. Such approvals, when revoked, shall be deemed to be permit denials and may be appealed by the aggrieved named party to the Sewage Handling and Disposal Appeal Review Board in accordance with § 32.1-166.6 of the Code of Virginia. All requests for appeals to the Appeal Review Board must be in writing and received by the commissioner within 30 days of receipt of notice of the revocation. With the written consent of the owner, the department may revise a permit, certification letter, or subdivision approval to

substantially comply with the Sewage Handling and Disposal Regulations. The owner may be required to file a new application and to provide formal or informal plans if such plans are required under the Sewage Handling and Disposal Regulations.

- C. An AOSE/PE must make minor revisions that are discovered to be necessary at any time, including, but not limited to, during the installation of the system, to a permit, certification letter or subdivision approval issued in reliance on the evaluations and/or designs of an AOSE/PE. This subsection shall not be construed to require an AOSE to make revisions, minor or major, that result from actions taken by the owner including, but not limited to, improper site grading, improper location of structures, removal, compaction or other damages to soils.
 - 1. Minor revisions do not include changes in design flow or substantive changes in square footage of absorption area.
 - 2. All revisions must fully comply with the Sewage Handling and Disposal Regulations and must be approved by the department before the issuance of the operation permit.
 - 3. Whenever major revisions, such as changes in system design or location, are required, a new application in accordance with Part IV (12 VAC 5-615-340 et seq.) of this chapter shall be required.
- D. Whenever a construction permit has been issued pursuant to a design certified by an AOSE/PE, the certifying AOSE/PE shall inspect that system at the time of installation and provide an inspection report, including an "as built" drawing, and completion statement to the owner and the local health department. The inspection report and completion statement shall be in a form approved by the division and shall state that the AOSE/PE has inspected the installation. It shall state any deficiencies discovered and identify the methods of correction, and it shall state that the system was installed in accordance with the construction permit, approved plans where appropriate, and the requirements of 12 VAC 5-610. The local or district health department may, but is not required to, perform an inspection of such systems as required under 12 VAC 5-610-320. Whenever an AOSE/PE is unable to conduct an inspection under this section, the owner may provide an inspection report and completion statement executed by another AOSE or PE. An Operation Permit (12 VAC 5-610-340) shall not be issued for any system until the appropriate report and completion statement have been received by the local or district health department.
- E. When the department has issued a construction permit for a private well only (no onsite sewage system), in reliance on a certification by an AOSE/PE, the construction inspection required by 12 VAC 5-630-320 will be performed by the local or district health department. In such cases, the owner shall provide to the local or district health department a written inspection statement signed by the AOSE/PE stating that the private well was installed in accordance with the permit and the Private Well Regulations. Whenever an AOSE/PE is unable to conduct an inspection under this section, the owner may provide an inspection report and completion statement executed by another AOSE or PE.

12 VAC 5-615-80. Processing time limits and deemed approval.

- A. The provisions of this section apply only to applications for residential development and do not apply to any application for a proprietary, pre-engineered system that has been deemed by the department to comply with the board's regulations. The department may accept evaluations and designs for such proprietary, pre-engineered systems in accordance with this chapter, however, the processing time limits and deemed approval shall not apply to any such application.
- B. The department shall review applications submitted with AOSE/PE documentation in the form specified in this chapter and shall issue a written approval or denial within the time frames specified in Table 1 of this subsection. In the event the application is denied, the department shall set forth in writing the reasons for denial.

Table 1

Type of Application	Time Limit
Individual Permit Application	15 working days
Individual Certification Letter	20 working days
Multiple Lot Certification Letter	60 days
Subdivision Review	60 days

- C. If the department does not approve or disapprove an AOSE/PE application or a request for a subdivision review properly submitted in accordance with this chapter within the time limits specified in Table 1, the application or request for subdivision review shall be deemed approved and the appropriate letter, permit, or approval shall be issued.

12 VAC 5-615-90. The practice of engineering.

- A. An AOSE may site and design traditional onsite systems; however, § 32.1-163.5 of the Code of Virginia provides that no one other than a licensed professional engineer may practice engineering. Section 54.1-400 of the Code of Virginia states the "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.
- B. An AOSE may submit site and soil evaluations as described in this chapter for any traditional system regardless of whether the system design requires an engineer. An AOSE, however, may only submit system designs and specifications for systems that do not require the practice of engineering. When a system is sufficiently complex to require the practice of engineering, formal plans and specifications, sealed by a professional engineer (PE) shall be required.

- C. Some traditional systems (see definition) may require the practice of engineering. An AOSE may design traditional systems that do not require the practice of engineering.
- D. When engineering plans and specifications are required for an application submitted pursuant to this chapter, the site evaluation work shall be either conducted and certified by an AOSE or certified by a PE working in consultation with an AOSE. When the site and soil evaluation submitted in support of the application is submitted by a PE, the engineer shall submit a statement indicating that he consulted with a specific AOSE, giving both the name and certification number of the AOSE, on the proposal under review.

12 VAC 5-615-100. AOSE certification required.

No person shall sign a certification statement for submittal to the department in support of an application for a sewage disposal system construction permit representing that he is an AOSE/PE or otherwise represent that he is an AOSE/PE unless that person possesses a valid certification as an AOSE issued by the commissioner in accordance with 12 VAC 5-615-240.A or unless that person is a Virginia licensed Professional Engineer who has consulted with an AOSE in accordance with this chapter.

12 VAC 5-615-110. Right of entry.

The commissioner or the commissioner's designee shall have the right to enter any property to assure compliance with this chapter in accordance with the provisions of § 32.1-25 of the Code of Virginia.

12 VAC 5-615-120. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"AOSE/PE" means an authorized onsite soil evaluator or a professional engineer working in consultation with an authorized onsite soil evaluator.

"Authorized onsite soil evaluator (AOSE)" means a person currently listed by the board as possessing the qualifications to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.

"Backlog" is deemed to exist when the processing time for more than 10% of a local or district health department's complete bare applications for construction permits exceeds a predetermined number of working days (i.e., a 15-day backlog exists when the processing time for more than 10% of permit applications exceeds 15 working days). When calculating backlogs, only applications for construction permits shall be counted.

"Bare application" means an application for a construction permit or a certification letter submitted without supporting documentation from an AOSE/PE.

"Board" means the State Board of Health.

"Certification letter" means a letter issued by the department, in lieu of a construction permit, that identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system.

"Complete application" means an application for a construction permit or certification letter that includes all necessary information needed to process the application as specified in 12 VAC 5-610-250 including a site plan as specified in 12 VAC 5-610-460.

"Deemed approved" or "deemed approval" means that the department has not taken action to approve or disapprove an application for a permit, an individual lot certification letter, multiple lot certification letters, or subdivision approval for residential development within the time limits prescribed in §§ 32.1-163.5 and 32.1-164 H of the Code of Virginia. In such cases, an application submitted in proper form pursuant to this chapter is deemed approved and the appropriate letter or letters, permit, or approval shall be immediately issued by the department. Deemed approval applies only to applications for single-lot construction permits, subdivision review, and single or multiple-lot certification letters submitted with evaluations and designs certified by an AOSE/PE in accordance with the provisions of the Code of Virginia, the Sewage Handling and Disposal Regulations, and this chapter. Sites that have been previously denied by the department and proprietary, pre-engineered systems deemed by the department to comply with the board's regulations are not subject to the provisions of deemed approval. An application "deemed approved" means that it is approved only with respect to the Board of Health's regulations. In accordance with 12 VAC 5-615-60.B a local government may authorize the department in writing to implement the provisions of any local ordinance that are more restrictive than the Sewage Handling and Disposal Regulations through the provisions of this chapter.

"Multiple lot certification letters" means two or more applications for certification letters filed by the same owner for existing or proposed lots to serve detached, individual dwellings.

"Professional courtesy review" means a site-specific field review requested by an AOSE/PE prior to the submission of an application for a construction permit or certification letter or a general field consultation (not site-specific) regarding a proposed subdivision.

"Professional engineer in consultation with an AOSE" means that a professional engineer has communicated with an AOSE regarding the site and soil conditions present where the system is proposed, in a manner sufficient to assure compliance with the Sewage Handling and Disposal Regulations and this chapter.

"Processing time" means the number of working days from the date a complete, bare application is received by a local or district health department to the date a permit or certification letter is issued. Working days characterized by severe weather conditions shall not be included in any calculation of processing time.

"Residential development" means development, including repair or replacement systems in accordance with 12 VAC 5-610-280 C 2, using single family homes, which utilize individual onsite sewage systems for each structure. Mass drainfields and other cluster systems that serve more than one dwelling are not considered residential development for the purposes of this chapter.

"Single lot construction permit/certification letter" means one application filed by an owner for a sewage disposal system construction permit or certification letter to serve an individual dwelling on one lot or parcel of land.

"Subdivision review" means the review of a proposed subdivision plat by a local health department for a local government pursuant to a local ordinance or ordinances and pursuant to §§ 15.2-2242 and 15.2-2260 of the Code of Virginia and 12 VAC 5-610-360 of the Sewage Handling and Disposal Regulations for the purposes of determining and documenting whether an approved sewage disposal site is present on each proposed lot.

"Traditional systems" means onsite wastewater treatment and disposal systems, including proprietary, pre-engineered systems deemed by the department to comply with the board's regulations, that have received provisional or general approval under, or for which design criteria are contained in, the Sewage Handling and Disposal Regulations, except as noted below. For the purposes of this chapter, traditional systems do not include experimental permits, conditional permits issued for temporary, intermittent or seasonal use, septage stabilization systems, or systems permitted under a soil drainage management plan. Conditional construction permits issued for limited occupancy or the use of permanent water saving fixtures are not excluded (see 12 VAC 5-610-250 J).

PART II.
COMPLIANCE WITH ADMINISTRATIVE PROCESS ACT.

12 VAC 5-615-130. Compliance with Virginia Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia shall govern the promulgation and administration of this chapter and shall be applicable to the appeal of any case decision based upon this chapter.

12 VAC 5-615-140. Emergency order or rule.

If an emergency exists, the commissioner may issue an emergency order or rule as is necessary for preservation of public health, safety, and welfare. The emergency order or rule shall state the reasons and precise factual basis upon which the emergency rule or order is issued. The emergency order or rule shall state the time period for which it is effective.

12 VAC 5-615-150. Enforcement of regulations.

- A. All activities of an AOSE/PE pertaining to evaluations and designs of sewage treatment systems governed by the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.) and applications for certification as an AOSE shall comply with the requirements set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available.
- B. Subject to the exceptions indicated below, whenever the commissioner, the commissioner's designee, or the district or local health department has reason to believe a violation of this chapter, any law administered by the board, commissioner, or department, any regulations of the board, any order of the board or commissioner, or any conditions in a permit has occurred or is occurring, the department shall notify the alleged violator. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts that form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (see § 32.1-27 of the Code of Virginia). In addition, or in the alternative, when the commissioner or the commissioner's designee deems it necessary, the department may initiate criminal prosecution or seek civil relief in circuit court through mandamus or injunctive relief without giving notice. Written notice pursuant to this section is required only when the department intends to pursue administrative enforcement pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

- C. Pursuant to the authority granted in § 32.1-26 of the Code of Virginia, the commissioner may issue orders to require any person to comply with the provisions of this chapter. The order shall be signed by the commissioner and may require, for example:
1. The immediate cessation or correction, or both, of the violation;
 2. The submission of a plan to prevent future violations to the commissioner for review and approval;
 3. The submission of an application for certification as an AOSE, an application for a permit, or an application for a variance; and
 4. Any other corrective action deemed necessary for proper compliance with the regulations or to protect public health.
- D. Before the issuance of an order described in subsection C of this section, a hearing must be held with at least 30 days notice to the affected party of the time, place and purpose thereof, for the purpose of adjudicating the alleged violation or violations of this chapter. The procedure at the hearing shall be in accordance with § 2.2-4020 of the Code of Virginia.
- E. All orders shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the person violating this chapter. Violation of an order is a misdemeanor. (See § 32.1-27 of the Code of Virginia.)
- F. The commissioner may enforce all orders. Should any person fail to comply with any order, the commissioner may:
1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;
 2. Seek mandamus against any owner or person that is a municipal corporation;
 3. Request the Attorney General to bring an action for civil penalty;
 4. Request the Commonwealth's Attorney to bring a criminal action.
- G. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

12 VAC 5-615-160. Suspension of regulations during disasters.

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with this chapter, the commissioner may authorize the suspension of the application of the regulations

for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12 VAC 5-615-170. Variances.

- A. The commissioner may grant a variance to this chapter. The commissioner shall follow the appropriate procedures set forth in this section in granting a variance.
- B. A variance is a conditional waiver of a specific regulation which is granted to a specific person and may be for a specified time period.
- C. The commissioner may grant a variance if a thorough investigation reveals that the hardship imposed (may be economic) by this chapter outweighs the benefits that may be received by the public and that the granting of such variance does not subject the public to unreasonable health risks.
- D. Any person who seeks a variance shall apply in writing for a variance. The application shall be sent to the commissioner for review. The application shall include:
 - 1. A citation to the regulation from which a variance is requested;
 - 2. The nature and duration of the variance requested;
 - 3. Any relevant information in support of the request including information relating to experience or education received, or evaluations and designs conducted pursuant to the requirements of this chapter;
 - 4. The hardship imposed by the specific requirement of this chapter;
 - 5. A statement of reasons why the public health and welfare would be better served if the variance were granted;
 - 6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
 - 7. Other information, if any, believed pertinent by the applicant; and
 - 8. Such other information as the commissioner may require.
- E. The commissioner shall act on any variance request submitted pursuant to subsection D of this section within 60 working days of receipt of the request.
- F. In the commissioner's evaluation of a variance application, the commissioner shall consider the following factors:

1. The effect that such a variance would have on the performance of the AOSE/PE or system;
2. The cost and other economic considerations imposed by this requirement;
3. The effect that such a variance would have on protection of the public health;
4. Any relevant information in support of the request including information relating to experience or education received, or evaluations and designs conducted pursuant to the requirements of this chapter;
5. The hardship imposed by enforcing the specific requirement of this chapter;
6. The applicant's statement of reasons why the public health and welfare would be better served if the variance were granted;
7. The suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
8. Other information, if any, believed pertinent by the applicant;
9. Such other information as the commissioner may require; and
10. Such other factors as the commissioner may deem appropriate.

G. Disposition of a variance request:

1. The commissioner may reject any application for a variance by sending notice to the applicant. The rejection notice shall be in writing and shall state the reasons for rejection. The applicant may petition for a hearing to challenge the rejection pursuant to 12 VAC 5-615-180 within 30 calendar days of receipt of notice of rejection.
2. If the commissioner proposes to grant a variance request submitted pursuant to subsection D of this section, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, person, property, or sewage handling or disposal facility covered, and shall specify the period of time for which the variance will be effective and any conditions imposed pursuant to issuing the variance. The effective date of a variance shall be 15 calendar days following its issuance.
3. No person may challenge the terms set forth in the variance after 30 calendar days have elapsed from the date of issuance.

H. All variances granted are nontransferable. A variance may be attached to a person's certification to act as an AOSE or to a permit or other approval document. A variance is

revoked when the permit or other approval or AOSE certification to which it is attached is revoked.

- I. Any request for a variance must be made by the applicant in writing and received by the department prior to the denial of a certification for authorization as an AOSE, or within 30 days after such denial.

12 VAC 5-615-180. Case decisions.

The agency may make case decisions via informal hearings or by agreement. An informal hearing, for purposes of this chapter, is conducted by a department employee designated by the commissioner. The agency shall provide the named party with reasonable notice of violations and administrative hearings, the right to be present at administrative hearings or by counsel or other qualified representative before the agency or its subordinates for the informal presentation of factual data, argument or proof in connection with any case. A named party shall also have the right to (i) have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision, (ii) receive a prompt decision of any application for a permit, benefit or renewal, and (iii) to be informed, briefly and generally, in writing, of the factual basis or procedural basis for an adverse decision in any case. The commissioner's designee shall review the facts presented and based on those facts render a case decision. Such case decision shall be the final administrative decision of the agency. The agency may, but is not required to, have a verbatim record made of the hearing proceedings. When a verbatim record is made at the direction of the agency, it shall constitute the official record of the proceedings. A written copy of the decision and the basis for the decision shall be sent to the named party in a timely manner in accordance with the Administrative Process Act unless the parties mutually agree to a later date in order to allow the department to evaluate additional evidence. Only an aggrieved named party to a case decision may appeal an adverse decision to the appropriate circuit court pursuant to § 2.2-4026 of the Code of Virginia and Part Two A of the Rules of the Supreme Court of Virginia.

12 VAC 5-615-190. (Reserved.)

12 VAC 5-615-200. Appeal.

- A. Any appeal from a denial of an application for certification as an AOSE must be made by the applicant in writing and received by the department within 30 days of the date of receipt of notice of the denial.
- B. Any request for hearing on the denial of an application for a variance pursuant to 12 VAC 5-615-170 must be made by the applicant in writing and received within 30 days of receipt of the notice.

- C. In the event a person applies for a variance within the 30-day period provided by 12 VAC 5-615-170.I, the date for appealing the denial of the certification pursuant to subsection B of this section shall commence from the date on which the department acts on the request for a variance.
- D. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), an aggrieved named party may appeal an adverse case decision to an appropriate circuit court.

PART III.
AOSE CERTIFICATION REQUIREMENTS.

12 VAC 5-615-210. Persons holding a valid certificate on July 1, 2002.

Any person holding a valid certificate as an AOSE on July 1, 2002, may apply for renewal in accordance with 12 VAC 5-615-270. Such individuals will not be required to pass the written and field tests.

12 VAC 5-615-220. Reserved.

12 VAC 5-615-230. Application requirements.

Any person may apply to the department for certification as an AOSE by filing a complete application in a form approved by the division, by paying the application fee in accordance with 12 VAC 5-615-250, and by submitting three professional references from an AOSE, a PE, or a Virginia Certified Professional Soil Scientist. In addition, all applicants for certification as an AOSE shall pass the AOSE written and field tests and meet at least one of the requirements below:

1. A person holding a current certificate as a Virginia Certified Professional Soil Scientist from the Board of Professional Soil Scientists shall be eligible to receive a certificate as an AOSE upon passing the AOSE written and field tests.
2. A person who demonstrates to the satisfaction of the division that he has at least four years of full-time experience evaluating site and soil conditions for onsite sewage systems in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-20 et seq.) and a related four-year college degree such as science or engineering shall be eligible to receive a certificate as an AOSE provided:
 - a. The applicant successfully completes a training course or courses designated and approved by the division; and
 - b. The applicant successfully completes the AOSE written and field tests approved by the division.
3. A person who demonstrates to the satisfaction of the division that he has at least six years of full-time experience evaluating site and soil conditions for onsite sewage systems in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-20 et seq.) and a two- or four-year college degree shall be eligible to receive a certificate as an AOSE provided:

- a. The applicant successfully completes a training course or courses designated and approved by the division;
 - b. The applicant passes the AOSE written and field tests; and
 - c. The applicant provides a written statement signed by a current or former supervisor or an AOSE with a current certification stating that the person is sufficiently experienced to become an AOSE.
4. A person who demonstrates to the satisfaction of the division that he has at least eight years of experience evaluating site and soil conditions for onsite sewage systems in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-20 et seq.) shall be eligible to receive a certificate as an AOSE provided:
- a. The applicant successfully completes a training course or courses designated and approved by the division,
 - b. The applicant successfully completes the AOSE written and field tests approved by the division, and
 - c. The applicant provides a written statement signed by a current or former supervisor or an AOSE with a current certification stating that the person is sufficiently experienced to become an AOSE.

12 VAC 5-615-240. Disposition of AOSE applications.

- A. Upon satisfactory completion of the requirements of 12 VAC 5-615-230, the commissioner shall issue to the applicant a certification as an AOSE.
- B. Applicants who have been found ineligible for any reason may request further consideration by submitting in writing evidence of additional qualifications, training, or experience. No additional fee will be required provided the requirements for certification are met within one year from the date the original application is received by the department. After such period, a new application shall be required.
- C. If the commissioner finds that the applicant has not met the minimum requirements for certification as an AOSE, the applicant shall be notified in writing, sent by certified mail or hand delivered, and the reasons for denial of the certification shall be stated. The notice to the applicant of denial shall also state that the applicant has the right to a hearing as specified in 12 VAC 5-615-180 to challenge the certification denial. Any request for a hearing must be received by the commissioner within 30 days of the affected party's receipt of written notice of the decision.
- D. Before approving an AOSE application, the commissioner or the commissioner's designee may make further inquiries and investigations with respect to the qualifications of the

applicant and all references, etc. to confirm or amplify the information supplied. The commissioner may also require a personal interview with the applicant.

12 VAC 5-615-250. Fees for applications, training, and testing.

- A. The following fees will be assessed. All fees due the department shall be paid by check or money order.
- B. Any person making application for certification as an AOSE or applying for renewal of an AOSE certification shall pay an application fee of \$100.
- C. Those persons taking a department-sponsored training course or courses as specified in 12 VAC 5-615-230 shall pay the fee for such course as determined by the department. Fees for such course or courses will be based on the department's actual expenses in preparing course materials and conducting the training. This section is not intended to prevent or discourage training courses recognized by the department and offered by entities other than the department. In the case of training that is not directly sponsored by the department, applicants will pay appropriate fees to the sponsoring entity.
- D. Those persons taking written and field tests specified in 12 VAC 5-615-230 shall pay a fee for such testing as determined by the department based on the actual costs of preparing and administering the tests.

12 VAC 5-615-260. Expiration of AOSE certifications.

AOSE certifications shall expire on June 30 of the second calendar year following the year in which the certificate was issued unless revoked or suspended.

12 VAC 5-615-270. Renewal of expired AOSE certifications.

- A. Any person whose AOSE certification has expired in accordance with 12 VAC 5-615-260 may apply to the department for renewal of that certification. An AOSE may apply for renewal not more than 60 days prior to the expiration of his AOSE certification. If more than six months have elapsed from the expiration of the most recent certification, the department may require an applicant to comply with the provisions of 12 VAC 5-615-230 and subsection C of this section. Suspended certifications are not renewable until reinstated by the department; revoked certifications cannot be renewed.
- B. Any person making application for renewal of an AOSE certification shall file a complete application in a form approved by the division and pay the application fee in accordance with 12 VAC 5-615-250.
- C. Any person making application for renewal of an AOSE certification shall provide documentation that he has earned two continuing education units (CEUs) in topics related to the evaluation of site and soil conditions for onsite sewage treatment and disposal and/or the design of onsite sewage treatment and disposal systems during the previous two years. For

the purposes of this chapter, a CEU shall be equivalent to 10 contact hours of instruction in subject matter and from sources approved by the division. Each AOSE shall be responsible for maintaining appropriate records of CEUs and for providing proof of satisfactory completion of CEUs to the department.

12 VAC 5-615-280. Site evaluations and design certifications to comply with regulations.

No AOSE/PE shall certify a site evaluation and/or design unless such evaluation and/or design complies with the minimum requirements of the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.) and such certification and/or design is produced in accordance with this chapter. An AOSE/PE shall make a good faith effort to secure complete, accurate, and timely information regarding site and soil conditions, including relevant factors on adjacent parcels, including but not limited to utilities, water supplies, and other sewage systems. The AOSE/PE shall certify that all information submitted is true and correct to the best of his knowledge and shall be required to be aware of all information in agency files pertaining to the site he is certifying.

12 VAC 5-615-290. Revocation or suspension of AOSE certification.

- A. The commissioner may revoke or suspend an AOSE certification for failure to comply with any law administered by the board, commissioner, or department, any regulations of the board, any order of the board or commissioner, or any conditions in a permit.
- B. Actions that may result in revocation or suspension include, but are not limited to, certifying as suitable a site that does not comply with the minimum requirements of the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.), certifying as suitable a site that has been rejected by the department unless certified pursuant to 12 VAC 5-615-320, falsifying any document, and any act of misrepresentation made related to AOSE activities.
- C. Whenever the commissioner or the commissioner's designee takes action to revoke or suspend an AOSE certification, there must be an informal fact-finding conference in accordance with 12 VAC 5-615-180 and proper notice must be given to the affected party.
 - 1. The AOSE shall be notified in writing. The notice must be hand delivered or sent by certified mail. The notice must provide the factual and legal basis for the contemplated action and must give the date, time, place, and location of the informal fact-finding conference.
 - 2. The informal fact-finding conference is to be conducted by an employee of the department designated by the commissioner. The conference shall be conducted in accordance with, but is not limited to, the requirements of § 2.2-4019 of the Code of Virginia and may include the creation of a verbatim or summary record of the proceedings.
 - 3. The commissioner or the commissioner's designee shall render a decision from the informal fact-finding conference in a timely manner in accordance with § 2.2-4021 of

the Code of Virginia. Such decisions shall constitute the final administrative decision and may be appealed in accordance with 12 VAC 5-615-180.

4. When action is taken to suspend an AOSE certification, that suspension shall be for a specified period of time. Remedial actions including, but not limited to, additional training courses, additional testing, and reevaluation of a site and/or redesign of an onsite sewage system may be specified as conditions of any suspension.

12 VAC 5-615-300. Application for reinstatement of AOSE certification.

Any person whose AOSE certification has been revoked pursuant to 12 VAC 5-615-290 may apply to the department for reinstatement as an AOSE no sooner than 12 months after the effective date of the revocation. Any person making application for reinstatement of an AOSE certification pursuant to this section shall:

1. File a complete application in a form approved by the division and pay the application fee in accordance with 12 VAC 5-615-250. The AOSE application for reinstatement must also include a certification that the AOSE has not engaged in AOSE activities after his certification was revoked, and
2. Provide documentation that the applicant has satisfactorily completed any remedial actions required as a result of the revocation. Remedial actions including, but not limited to, additional training courses, additional testing, and reevaluation of a site and/or redesign of an onsite sewage system may be specified as conditions for reinstatement.

12 VAC 5-615-310. Appeal of suspension or revocation.

In accordance with 12 VAC 5-615-180, any person whose AOSE certification has been suspended or revoked shall have the right to review by the appropriate circuit court.

12 VAC 5-615-320. AOSE/PE cannot certify a site that has been previously denied by the department.

No AOSE/PE shall certify a site as meeting the minimum requirements of the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.) if the department has previously denied that site. Exceptions:

1. An AOSE/PE may certify a previously denied site as meeting the requirements of the Sewage Handling and Disposal Regulations if the board's regulations or policies have changed in such a way that the site is suitable for a system that was not allowed by the board's prior regulations or policies at the time of the original denial, and
2. An AOSE/PE may certify as meeting the requirements of the Sewage Handling and Disposal Regulations a site located on the same property as a site previously denied

by the department if the site being certified is not the same one that was denied by the department.

12 VAC 5-615-330. Change of address or other status.

The AOSE shall be responsible for notifying the commissioner of any change in address, business partnership or affiliation, or any other status that affects his standing as an AOSE. Such notice must be in writing and must be delivered to the commissioner as soon as practicable after the effective date of the change.

**PART IV.
PROCEDURES AND REPORTS.**

12 VAC 5-615-340. Application processing.

- A. All applications that are submitted with evaluation and design documentation by an AOSE/PE shall contain the minimum required information necessary to complete the application and shall be accompanied by the required fees. Such applications when submitted for residential development will be processed within specified time limits in 12 VAC 5-615-80.
- B. When such an application is found to be complete an approval may be issued without field review.
- C. Applications that are found to be incomplete or defective in any manner shall be denied and the owner and AOSE/PE will be notified of deficiencies. If an application has been denied, the owner or his agent may submit a new application to correct the deficiency or deficiencies contained in his first application. If the application is received within 90 days, the department will waive all state fees associated with the new application. This waiver may be granted not more than once per site.

12 VAC 5-615-350. Documentation requirements for AOSE/PE reports.

- A. Applications may be submitted for a single lot construction permit, a single lot certification letter, multiple lot certification letters, and subdivision reviews. The minimum requirements for each type of application are listed below. Additional information may be submitted when an AOSE/PE believes it may be in the interest of public health, the environment, or the client.
- B. A complete application for a construction permit shall consist of the following:
 - 1. A complete application for a Sewage Disposal System Construction Permit (CHS 200), signed, dated, and with all pertinent information supplied;
 - 2. The appropriate fee for the application as per the Code of Virginia;
 - 3. A site evaluation report in accordance with 12 VAC 5-615-360 and the department's policies;
 - 4. A proposed well site (when a private water supply is proposed);
 - 5. Construction drawings and specifications for the recommended system in accordance with 12 VAC 5-615-380 and the department's policies; and

6. A statement in accordance with 12 VAC 5-615-70, 12 VAC 5-615-280, and 12 VAC 5-615-380.C certifying that the site and soil conditions and design conform with the Sewage Handling and Disposal Regulations (12 VAC 5-610).
- C. A complete application for certification letter differs from an equivalent application for a construction permit in that a complete design is not required. It is, however, necessary to assure a system meeting the requirements specified on the application can be supported by the proposed site. Therefore, the requirements for a single certification letter are:
1. A complete application for a Sewage Disposal System Construction Permit (CHS 200), signed, dated, and with all pertinent information supplied;
 2. The appropriate fee for the application;
 3. A site evaluation report in accordance with 12 VAC 5-615-360 and the department's policies;
 4. A proposed well site (when a private water supply is proposed);
 5. An abbreviated system design for the type of system proposed in a form approved by the division; and
 6. A statement in accordance with 12 VAC 5-615-70, 12 VAC 5-615-280, and 12 VAC 5-615-380.C certifying that the site and soil conditions and design conform with the Sewage Handling and Disposal Regulations.
- D. Applications for multiple certification letters may be used as the method for reviewing proposed subdivisions in localities that do not require the local health department to review proposed subdivisions. Each application submitted must contain the following:
1. Complete applications for Sewage Disposal System Construction Permits (CHS 200), signed, dated, and with all pertinent information supplied;
 2. The appropriate fee for each site to be reviewed;
 3. Site evaluation reports in accordance with 12 VAC 5-615-360 and the department's policies;
 4. Proposed well sites (when a private water supply is proposed);
 5. Abbreviated system designs for the type of system proposed in a form approved by the division;
 6. A statement in accordance with 12 VAC 5-615-70, 12 VAC 5-615-280, and 12 VAC 5-615-380.C for each proposed site certifying that the site and soil conditions and design conform with the Sewage Handling and Disposal Regulations; and

7. If the multiple certification letters are intended to establish the suitability of soils for a proposed subdivision, the information specified in subdivision E.3.c of this section is to be submitted by the applicant.
- E. Section 32.1-163.5 of the Code of Virginia provides that the department shall accept private site evaluations and designs, for subdivision review for residential development, designed and certified by a licensed professional engineer in consultation with an AOSE or by an AOSE. The following shall apply to all requests for subdivision review and approval:
1. All requests for subdivision reviews must be submitted to the local health department with a request from the local government entity specifically asking for review of the proposed lots for onsite wastewater system approvals pursuant to the local ordinance governing such proposals (cite reference to local ordinance).
 2. In localities where there is no subdivision ordinance, subdivisions should be handled using applications for multiple certification letters (see subsection D of this section).
 3. All requests submitted by local governments for review and approval must contain the following minimum information:
 - a. A letter requesting subdivision review and certification by the locality that the subdivision package has been determined to be complete.
 - b. Individual site and soil evaluation reports in accordance with 12 VAC 5-615-360 for each proposed lot in the subdivision. These individual reports must be identified as to the subdivision and the proposed lot number.
 - c. A preliminary subdivision plat that provides the information specified in 12 VAC 5-610-360. This includes all information required by the local ordinance, and includes the following if not required by local ordinance: proposed streets, utilities, storm drainage, water supplies, easements, lot lines, existing and proposed water supplies for each proposed lot and within 200 feet of any proposed or existing sewage system, and original topographic contour lines by detail survey. The plat shall be prepared according to suggested scales and contour intervals contained in Appendix L of the Sewage Handling and Disposal Regulations.
 4. Abbreviated system designs in a form approved by the division for the type of system proposed.
 5. A statement in accordance with 12 VAC 5-615-70, 12 VAC 5-615-280, and 12 VAC 5-615-380.C for each proposed site certifying that the site and soil conditions and design conform to the Sewage Handling and Disposal Regulations.

Table 2
Types of Applications

	Single Lot Construction Permit	Single Lot Certification Letter	Multiple Lot Certification Letters	Subdivision
Application	X	X	X	
Fee	X	X	X	
Site Evaluation	X	X	X	X
Proposed Well Site	X	X	X	X
Construction Drawings	X			
Construction Specifications	X			
Design Calculations	X			
Abbreviated Design calculations		X	X	X
Certification of Compliance	X	X	X	X
Local Government Request				X
Preliminary Subdivision Plat			X (as necessary)	X
Max. Time to Process	15 Working Days	20 Working Days	60 Days	60 Days
Rec. Time to Process	5 Working Days	10 Working Days	45 Days	45 Days

12 VAC 5-615-360. Site evaluation reports.

All site evaluation reports submitted to the department shall be in a form approved by the division, shall contain the minimum information specified by the division, and shall be certified as fully complying with the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.). A statement approved by the department shall be used to certify that a site evaluation and/or design complies with the board's regulations for onsite sewage systems. No approval shall be granted pursuant to this chapter for any site that has not been certified by an AOSE/PE. Additional information required by local ordinances (i.e., Chesapeake Bay requirements) may be included with an AOSE submission in order to facilitate processing the application. However, for the purposes of an AOSE/PE certifying that an evaluation and/or design complies with the Sewage Handling and Disposal Regulations and for "deemed approval" only those requirements contained in the Board of Health's regulations are considered to apply unless a local government has requested its health department to implement a more restrictive local ordinance in accordance with 12 VAC 5-615-60.B. Wastewater system sites proposed for use must be defined in a manner that allows them to be identified with an accuracy and precision of three feet or less.

12 VAC 5-615-370. Access to information.

When requesting information from the department's official records, an AOSE/PE shall clearly and accurately identify property locations, using tax map numbers when possible, and specify the

information requested on a form approved by the division. The department shall, as resources permit, provide the requested information in as timely a manner as possible, and shall in all cases comply with the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

12 VAC 5-615-380. System design requirements, construction drawings, certification statement, and site denial.

A. Any application for a construction permit accompanied by an AOSE/PE certification shall contain construction drawings, plans, and specifications in a form approved by the division sufficient to allow the system to be installed by the contractor in accordance with the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.) and the proposed permit. When a system is sufficiently complex to require the practice of engineering, a professional engineer shall seal the plans and specifications. The design information necessary to issue a sewage disposal system construction permit includes:

1. All the information required on form CHS 202 A and B (see Forms, Sewage Handling and Disposal Regulations);
2. System construction drawings containing the minimum information as determined by the division;
3. Plans and specifications sufficient to allow the successful installation of a system when the application is for a construction permit;
4. Design calculations used to establish the design parameters of the recommended system, including the minimum information deemed appropriate by the division; and
5. Three copies of the construction drawings and specifications.

Subdivisions 1 through 5 of this subsection establish the minimum information necessary to issue a construction permit. Additional information may be necessary depending on the specific site. Applications that do not contain this minimum data set shall be denied.

- B. Certification letters and subdivision submittals do not normally require a complete design with specifications. Prior to applying for a certification letter or preparing a package for subdivision review an AOSE/PE shall conduct evaluations and provide documentation sufficient to verify that specific and sufficient area is available for the proposed system, including setback distances, and that the soils are capable of supporting the proposed design flow.
- C. All site evaluation work submitted in support of a construction permit, certification letter, or subdivision review shall be in the form specified above and shall be certified as fully complying with the Sewage Handling and Disposal Regulations. A certification statement approved by the department shall be used to make such certification.

- D. In some cases an owner may desire to submit an application with a certification by an AOSE/PE stating that a site does not comply with the minimum requirements of the Sewage Handling and Disposal Regulations. In such cases an AOSE/PE may submit the appropriate reports and information as required by this chapter and the department shall process the application in accordance with the procedures for processing applications for permits and letters. Instead of issuing a permit or letter, the department will issue a denial letter.

12 VAC 5-615-390. Professional courtesy review.

- A. Any AOSE/PE may request a site-specific professional courtesy review, prior to the submission of an application for a construction permit or certification letter, where he has determined that the site and soil conditions in a specific area proposed for an onsite sewage system are marginal or where he has not been able to determine with certainty that the conditions comply with the requirements of the Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.). A request for review shall be in a form approved by the division and shall include written authorization from the owner giving the department permission to enter the property and a complete evaluation report as described in 12 VAC 5-615-360, with the exception of the certification statement. In place of the certification statement required under 12 VAC 5-615-360 the AOSE/PE shall provide a brief description of the particular site and soil features or characteristics that the AOSE/PE has identified as marginal or questionable and which form the basis for the request for review and a preliminary opinion as to whether the site meets the requirements of the Sewage Handling and Disposal Regulations. Professional courtesy reviews are not intended to replace the AOSE/PE's responsibility to exercise professional judgement in determining whether a site meets the minimum requirements of the Sewage Handling and Disposal Regulations. The department is not required to perform such reviews but may do so in its sole discretion.
- B. In accordance with 12 VAC 5-615-70.B.3, the department may limit professional courtesy reviews for construction permits and certification letters. Whenever the department determines that it will not provide a requested review, it shall notify the AOSE/PE and the applicant in writing within a reasonable time. When the department elects to provide professional courtesy reviews, it shall do so in a reasonable time.
- C. Any AOSE/PE may request a general (not site-specific) professional courtesy review, prior to the submission of a proposal for subdivision approval to a local government entity, where he has determined that the site and soil conditions in an area proposed for a subdivision with onsite sewage systems are marginal or where he has not been able to determine with certainty that the conditions comply with the requirements of the Sewage Handling and Disposal Regulations. A request for review shall be in a form approved by the division and shall include written authorization from the owner giving the department permission to enter the property and a summary evaluation report that generally comports with the requirements of 12 VAC 5-615-360, with the exception of the certification statement. In place of the certification statement required under 12 VAC 5-615-360, the AOSE/PE shall provide a brief description of the particular site and soil features or characteristics that the AOSE/PE has identified as marginal or questionable and which form the basis for the request for review and a preliminary opinion as to whether the area generally meets the requirements of the

Sewage Handling and Disposal Regulations. Such requests are intended to allow the department to consult with AOSE/PEs in a nonsite-specific manner where the local health department's knowledge of general site and soil conditions and the requirements of the Sewage Handling and Disposal Regulations can assist the AOSE/PE and local governments in the planning stages of subdivision approval. Professional courtesy reviews are not intended to replace the AOSE/PE's responsibility to exercise professional judgment in determining whether a specific site meets the minimum requirements of the Sewage Handling and Disposal Regulations.

D. In accordance with 12 VAC 5-615-70.B.4, the department may limit professional courtesy reviews for proposed subdivisions. Whenever the department determines that it will not provide a requested review, it shall notify the AOSE/PE and the applicant in writing within a reasonable time. When the department elects to provide professional courtesy reviews, it shall do so in a reasonable time.

E. Professional courtesy reviews shall not be construed as case decisions.

12 VAC 5-615-400. Field checks.

The department is not required to perform a field check of AOSE/PE evaluations and designs prior to issuing a permit, certification letter, or subdivision approval; however, it may conduct a field analysis as it deems necessary to protect public health and the environment. Whenever the department performs such field checks, it shall make a record of the results of the analysis in a form approved by the division. The department shall mail a copy of such report to the owner and to the AOSE/PE at the address provided by the AOSE/PE with the evaluation and design reports or at the address supplied to the department with the AOSE's application for AOSE certification or renewal of certification.

PART V.
CONFLICT OF INTEREST AND DISCLOSURE.

12 VAC 5-615-410. Responsibility to the public.

The primary obligation of the AOSE is to the public. If the judgment of the AOSE is overruled under circumstances when the safety, health, property and welfare of the public are endangered, the AOSE shall inform the employer or client of the possible consequences and notify appropriate authorities.

12 VAC 5-615-420. Public statements.

- A. The AOSE shall be truthful in all AOSE matters.
- B. When serving as an expert or technical witness, the AOSE shall express an opinion only when it is based on an adequate knowledge of the facts and in areas on which he is competent to testify. Except when appearing as an expert witness in court or an administrative proceeding where the parties are represented by counsel, the AOSE shall issue no statements, reports, criticisms, or arguments on matters relating to AOSE practice that are inspired or paid for by an interested party or parties, unless the AOSE has prefaced the comment by disclosing the identities of the party or parties on whose behalf the AOSE is speaking and by revealing any self-interest.
- C. An AOSE shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.
- D. An AOSE shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the department by any other individual or business entity for licensure, certification, registration, renewal or reinstatement.

12 VAC 5-615-430. Conflicts of interest.

- A. The AOSE shall promptly and fully inform an employer or client of any business association, interest, or circumstance or circumstances that may influence the AOSE's judgment or the quality of service.
- B. The AOSE shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed in writing to all parties of current interest and he obtains the parties' written approval.
- C. The AOSE shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

- D. The AOSE shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the AOSE is responsible.

12 VAC 5-615-440. Solicitation of work.

In the course of soliciting work:

1. The AOSE shall not bribe.
2. The AOSE shall not falsify or permit misrepresentation of the AOSE's work or an associate's academic or AOSE qualifications, nor shall the AOSE misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.

12 VAC 5-615-450. Competency for assignments.

An AOSE shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

12 VAC 5-615-460. AOSE responsibility.

- A. The AOSE shall not knowingly associate in a business venture with, or permit the use of the AOSE's name or firm name by, any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating any law or regulations of the department.
- B. An AOSE who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Article 1 (§ 32.1-163 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia, shall immediately inform the commissioner in writing and shall cooperate in furnishing any further information or assistance that may be required.
- C. The AOSE shall, upon request or demand, produce to the commissioner, or any of his agents, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the commissioner against a certificate holder.
- D. Except as provided in subsection E of this section, an AOSE shall not utilize the evaluations, design, drawings or work of another AOSE without the knowledge and written consent of the AOSE or organization of ownership that originated the design, drawings or work. In the event that the AOSE who generated the original document is no longer employed by the firm retaining ownership of the original documents or is deceased, another AOSE who is a partner or officer in the firm retaining ownership of the original documents may authorize utilization of the original documents by another AOSE or firm. This fact must be disclosed to the department when submitting applications supported by AOSE materials and certifications.

- E. The information contained in Department of Health records, on which a decision to approve or deny a site has been made, shall be considered to be in the public domain and may be utilized by an AOSE without permission.
- F. An AOSE who relies on information in Department of Health files or has received permission to modify or otherwise utilize the evaluation, design, drawings or work of another AOSE pursuant to subsection D or E of this section may certify that work only after a thorough review of the evaluation, design, drawings or work and after he determines that he is willing to assume full responsibility for all design, drawings or work on which he relies for his opinion.
- G. The information contained in recorded plats or surveys may be utilized by an AOSE without permission. If modifications are to be made to the plats or surveys, such modifications shall only be made by a person or persons authorized pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 and Title 13.1 of the Code of Virginia to make such changes or modifications to the plats or surveys.

12 VAC 5-615-470. Good standing in other jurisdictions.

An AOSE licensed or certified to practice site and soil evaluations or to design onsite wastewater systems in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended, revoked or surrendered in connection with a disciplinary action or have been the subject of discipline in another jurisdiction.